

PUBLICATION

Agencies and the Department of Justice Raise Level of Civil Penalties for Violations

July 07, 2016

Under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Department of Justice (DOJ), Federal Trade Commission (FTC) and other agencies have raised the maximum civil penalties (CMPs) for legal violations. The amounts range from almost double the prior minimum level to more than double the maximum level. Under the False Claims Act (FCA), the maximum and minimum ends of the range also almost doubled. Changes are effective on August 1, 2016, with notice of the changes required by July 1, 2016.

Under the 2015 statute, adjustments to penalty levels are capped at 150 percent of the amount as of November 2, 2015. The purpose is to adjust for inflation since the last update in 1996. Agencies have differed in their interpretations of the year in which to begin. Starting in May 2016 with the Railroad Retirement Board, which upped its civil penalty structure to more than twice the current range, much speculation has attached to where the agencies would come out. Some chose to start with the 1996 date; others did so under the False Claims Act 1986 amendments date.

The DOJ FCA range sets the minimum penalty for each claim at \$10,781, compared to the current penalty of \$5,500, and the maximum penalty at \$21,563, compared to the current penalty of \$11,000. The FCA also imposes triple damages for the government's losses due to violations by defendants in addition to per-claim penalties. The new rule also increased the penalty for violations of the federal anti-kickback law to \$21,563 per violation.

The FTC has increased its maximum to \$40,000 from \$16,000 to cover violations such as Hart-Scott-Rodino premerger filing notification, Section 5 unfair or deceptive acts or practices, and violations of Section 5(b) final orders.

Penalties were increased in more than 50 other categories, including penalties for violations under the Financial Institutions Reform, Recovery and Enforcement Act, and penalties related to improper disclosure of bids on government contracts. Table A of the June 30, 2016, DOJ Federal Register Notice, FR Doc. 2016-15528 for the interim rule sets out the new penalties for each type of violation within the DOJ's jurisdiction. See Docket No. DAG 148.

The risk of exposure is high in FCA cases, which can involve thousands of claims. Each allegedly fraudulent claim can trigger a separate civil penalty.

For more information, please contact any of the members of Baker Donelson's Government Enforcement and Investigations Group.